

Fair Political Practices Commission

To: Chairman Getman; Commissioners Downey, Knox and Swanson

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: August 20, 2002

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case involves a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's motion, after concluding that "the constitutional case or controversy requirement of ripeness cannot be satisfied." This resolved all claims in favor of the FPPC. The Court entered judgment accordingly on January 22, 2002, and on February 20, 2002 plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeal. California ProLife Council, Inc. filed its opening brief on June 10, 2002. The FPPC and the Attorney General filed Answering Briefs on July 25, 2002. A hearing date has not yet been set.

2. *Danny L. Gamel et al. v. FPPC*

In September 2001, the Commission adopted the proposed decision of an Administrative Law Judge assessing a penalty of \$8,000 against plaintiffs for making campaign contributions in violation of §§ 84300 – 84302. Plaintiffs contested this decision by Writ of Mandate in the Fresno County Superior Court. On March 21, 2002, the Court upheld the Commission's determination that Dan Gamel and Rudy Olmos violated the Act, but vacated the finding against Gamel Inc. The penalties assessed against Dan Gamel were affirmed but the Court remanded the case to the Commission for reconsideration of the penalty assessed against Rudy Olmos. The plaintiffs have since filed a notice of appeal of the Superior Court's decision regarding the fines assessed against Mr. Gamel and the findings against Mr. Olmos. Appellants have filed their opening brief. The Commission's Opposition is due September 5 and appellants' Reply soon thereafter. Any hearing on the matter will be scheduled after briefing has been completed.

3. *Levine et al. v. FPPC*

On January 22, 2002, four publishers of “slate mail” – Larry Levine, Tom Kaptain, Scott Hart and the California Republican Assembly – filed suit in Federal District Court alleging that the Act’s slate mail identification and disclosure requirements (§§ 84305.5 and 84305.6) violate their constitutional rights. The first of these statutes contains identification and disclaimer provisions in effect prior to enactment of Proposition 208, while § 84305.6 was introduced by Proposition 34. The status conference originally scheduled for April 29 was continued to June 10, 2002, to coincide with the hearing on plaintiffs’ motion for preliminary injunction before Judge Lawrence K. Karlton, and both matters were continued again to July 29, 2002. At that hearing, the Court declined to hold a Status Conference on the ground that its ruling on the preliminary injunction might affect pretrial scheduling. The Court then observed that it might be required to abstain from the case altogether under recent Supreme Court precedent, and directed that the parties file briefs on that question by August 8, 2002. The briefs were timely submitted, and the Court is expected to issue its ruling in the near future.

4. *Fair Political Practices Commission v. Californians Against Corruption et al*

This case is now pending before the Third District Court of Appeal. The case stems from the FPPC’s 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211 of the Political Reform Act. In November 1995, the FPPC issued a default decision and order against the defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC filed a collection action in the Sacramento Superior Court to reduce the penalty to a civil judgment. The defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants’ cross-complaint/petition for writ of mandate for failure to prosecute. In March 2001, the Superior Court granted the FPPC’s motion for summary judgment in the collection action, and ordered defendants to pay the \$808,000 penalty plus interest. The defendants then filed this appeal in April 2001 and filed their opening brief in October 2001. The FPPC filed its response brief in April, and defendants have filed their reply. No date has yet been set for hearing.